

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY DEL ROSARIO AND JOEL BUENA ALIAS “JUN”, ACCUSED, JOEL BUENA, ACCUSED-APPELLANT.

G.R. Nos. 121095-97. November 18, 1997

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Joel Buena and Rudy del Rosario were charged with the crime of rape based on the following complaints:

ComplaintCrim. Case No. 209-92

The undersigned Complainant after having been duly sworn to on oath in accordance with law, accuses RUDY DEL ROSARIO and JOEL BUENA alias “Jun” of the crime of Rape, committed as follows:

That on or about May 13, 1992, in the City of Cavite, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, caused to be given to herein complainant MARIA VIRGINIA T. BALLESTA, a bottle of softdrink containing drugs and the latter, who has no knowledge of such adulteration, consumed the same and thereafter became unconscious and the herein accused, taking undue advantage of her unconsciousness, did then and there, willfully, unlawfully and feloniously have carnal knowledge of her against her will and consent.

ComplaintCrim. Case No. 210-92

The undersigned Complainant after having been duly sworn to on oath in accordance with law, accuses RUDY DEL ROSARIO and JOEL BUENA alias “Jun” of the crime of Rape, committed as follows:

That on or about May 13, 1992, in the City of Cavite, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, caused to be given to herein complainant VENEELYN VELASQUEZ, a bottle of softdrink containing drugs and the latter, who has no knowledge of such adulteration, consumed the same and thereafter became unconscious and the herein accused, taking undue advantage of her unconsciousness, did then and there, willfully, unlawfully and feloniously have carnal knowledge of her against her will and consent.

ComplaintCrim. Case No. 211-92

The undersigned Complainant after having been duly sworn to on oath in accordance with law, accuses RUDY DEL ROSARIO of the crime of Rape, committed as follows:

That on or about May 14, 1992, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will and consent. (pp. 35-36, Rollo.)

Accused-appellant Buena was arrested on July 27, 1992, but being only 15 years old at the time of the commission of the offense, he was released on recognizance of Barangay Captain Jose G. Santiago on October 19, 1992. Del Rosario, however, was not immediately arrested. Upon arraignment, accused-appellant pleaded not guilty, and his trial accordingly proceeded. This trial was already in its final stages when his co-accused del Rosario was finally arrested on January 14, 1994. He was thus arraigned on February 7, 1994, and pleaded not guilty to the charge (pp. 36-37, *Ibid.*).

The following facts, after joint trial of the three cases, appear duly established:

On March 12, 1992, Veneelyn Velasquez, then a 15-year old student, was invited by her friend, Maria Virginia Ballesta, to go to Ronnel Victoria's house along Castellar Street, San Roque, Cavite City to get a bracelet from Ronnel. Both were accompanied by Blessilda Campos. When they arrived at the house, Ronnel, accused del Rosario, and several other persons were there. Inside, Veneelyn was told that anyone who entered cannot leave without being subjected to hazing and so she was blindfolded, pricked on the neck, kissed on the cheeks, and slapped four times. After that, Veneelyn and her companions were allowed to go home.(pp. 37-38, *Ibid.*)

The following day, March 13, 1992, after being persuaded by Blessilda to again accompany her, this time to get a pocketbook, Veneelyn and Maria Virginia went back to Ronnel's house. Ronnel, accused del Rosario and accused-appellant Buena were in the house and they engaged the girls in some conversation. Ronnel then requested Blessilda to buy two bottles of Coca-Cola and she obliged. When she returned, Ronnel offered the drinks to Veneelyn and Maria Virginia but both, sensing something was wrong, refused. After some prodding from Ronnel, they relented and finished off the drinks. Thereafter, both girls felt dizzy and weak they could not stand up. (p. 38, *Ibid.*)

Veneelyn testified that accused-appellant Buena carried her to a room upstairs; he removed her T-shirt and pants. After that, she passed out and could not remember anything more. When she woke up, she felt pain in her vagina. Looking to her side, she saw accused del Rosario and accused-appellant Buena both on the bed and sound asleep. Maria Virginia was also lying beside her. Veneelyn woke up Maria Virginia and told her to get dressed. Someone then opened the door. Pretending to be asleep, the two girls covered themselves with a blanket but taking a peek, saw it was Blessilda. When Blessilda left, Veneelyn told Maria Virginia to try to escape and to inform her (Veneelyn's) mother where she is. Maria Virginia managed to do so (p. 38, *Ibid.*).

With Veneelyn left alone, del Rosario woke up and brought Veneelyn to another room where she was made to lie down on a bench. Her hands were tied and she was undressed. Del Rosario, while holding a knife, then had sexual intercourse with her. After that, she was told to dress up and not to tell anyone what had happened (p. 39, *Ibid.*).

Later, Veneelyn heard her mother shouting her name and looking for her. Del Rosario denied that Veneelyn was inside, but Veneelyn called out loud to her mother. Thus, she was able to get out of the house. When they were home, she told her mother and an uncle about the incident. They went to the police station where she executed a sworn statement, and later, they proceeded to the National Bureau of Investigation where she underwent physical examination (p.39, *Ibid.*).

The other complainant, Maria Virginia Ballesta, also only 15 years old at the time of the incident, corroborated Veneelyn's testimony, to wit : On March 13, 1992, Blessilda persuaded her to come along with Veneelyn to Ronnel's house to get a pocketbook; when they got to Ronnel's house, they were blindfolded; Ronnel told Blessilda to buy softdrinks from a nearby store, which the latter did; she placed the softdrinks on the table together with some sandwiches; it took her about 30 minutes to consume the softdrinks, after which she felt dizzy and very weak; she sensed accused del Rosario carry her upstairs and undress her; before she totally lost consciousness, she saw del Rosario lie on top of her and kiss her neck; when she came to after being roused by

Veneelyn, she felt pain in her vagina and saw that it was swollen; both del Rosario and accused-appellant Buena, with only their pants on, were likewise sleeping on the same bed; with Veneelyn, she also saw Blessilda take a look inside the room; as agreed upon, she got out of the house and went home; she lied, however, to her mother saying that she went with Veneelyn to a birthday party; she later went to Veneelyn's mother and told her about what really happened; after executing a sworn statement at the police station, she and Veneelyn and other companions were referred to the NBI for physical examination (pp. 39-41, *Ibid.*).

After trial, the Regional Trial Court of the Fourth Judicial Region (Branch 17, Cavite City), rendered a decision dated April 19, 1995, disposing of the three cases thusly :

WHEREFORE, in view of the foregoing, the Court finds the accused Rudy del Rosario and Joel Buena alias Jun guilty beyond reasonable doubt in Crim. Case No. 209-92 for Rape and they are hereby sentenced to undergo imprisonment of reclusion perpetua, to indemnify the offended party Maria Virginia Ballesta in the amount of P30,000.00 jointly and severally, in Crim. Case No. 210-92, the Court finds the accused Rudy del Rosario and Joel Buena alias Jun guilty beyond reasonable doubt for the crime of Rape and they are hereby sentenced to undergo imprisonment of reclusion perpetua, to indemnify Veneelyn Velasquez the amount of P30,000.00 jointly and severally and in Crim. Case No. 211-92, the Court finds the accused Rudy del Rosario guilty beyond reasonable doubt for the crime of Rape and he is hereby sentenced to undergo imprisonment of reclusion perpetua, to indemnify Veneelyn Velasquez the amount of P30,000.00 jointly and severally and to pay one half (½) each of the costs in all the cases.

Despite, however, the minority of the accused Joel Buena alias Jun at the time of the commission of the offense and up to the present (he having been born on May 26, 1977 as per proper birth certificate) released on recognizance of Brgy. Capt. Jose C. Santiago, Jr. of Brgy. 59, San Roque, Cavite City and pursuant to the provisions of Art. 192 of PD 603 as amended otherwise known as the Child & Youth Welfare Code which excludes him from the benevolent (sic) provisions thereof he is hereby ordered committed to the City Jail of Cavite City for proper detention in accordance with law. (pp. 51-52, *Ibid.*).

Only Buena has interposed an appeal wherein he contends that it was error for the trial court to disregard indicators showing consent on the part of Veneelyn and Maria Virginia. He points out that both girls returned to Ronnel's house despite the previous day's events during which they were allegedly subjected to hazing and some advances. Also, it is argued that even as complainants suspected the drinks to be drugged, yet they continued not only to take a sip, but to finish the bottles. Complainants, it is said, knew the house was located in a rather busy neighborhood with a mahjong game going on into the late hours, but they admit they did not even try to make any outcry. Much capital is also made of the fact that Maria Virginia did not tell her mother that she had been ravished, accused-appellant implying that Maria Virginia was less concerned of her defloration than her mother's anger (pp. 99-103, *Ibid.*).

Continuing, accused-appellant gives heavy reliance on the circumstance that no tests were conducted to verify the allegation that the softdrinks both girls drank were laced with drugs which caused the girls to lose consciousness; as well as on the undependability of the declarations of Veneelyn and Maria Virginia concerning the rape in view of their alleged semi-conscious state at the time. The way the girls' testimony harmonize with each other speaks, it is argued, not of mere coincidence but more of fabrication and rehearsal (pp. 100, 103, *Ibid.*).

The trial court's finding of conspiracy and the consequent conviction of accused-appellant Buena for the rape of Maria Virginia committed by accused del Rosario is also assailed as erroneous in the absence of adequate proof that conspiracy was indeed present. Lastly, flight in this case does not necessarily imply guilt, it is contended, motivated as it was, more by fear of the consequent imprisonment for a crime accused-appellant, who was only a minor at the time the alleged incident took place, is falsely accused of committing (pp. 103-104, *Ibid.*).

The Office of the Solicitor General rejects such contentions, and the Court fully agrees.

Under Paragraph 2, Article 335, of the Revised Penal Code, having carnal knowledge of an unconscious woman constitutes rape, opposition or resistance not being required, for the state the woman is in means she has no will (Aquino, Ramon C. The Revised Penal Code, vol. III, 1976 ed., p.1692). Thus, it does not matter if Veneelyn and Maria Virginia did not shout for help because it was impossible to do so at the time they were being raped. Even if they had the opportunity to shout for succor after regaining consciousness, such lapse, if it be one, does not detract from the fact that the crime had indeed been committed. Failing to cry "Rape!" then, under the circumstances, does not serve any purpose in accused-appellant's bid to exculpate himself.

It also does not matter that Veneelyn and Maria Virginia, ignoring their unfortunate experience the day before, returned to Ronnel's house, for as The People correctly puts it, the girls went there simply to accompany Blessilda who had to get something from the house, not for any other purpose, surely not for a tryst. The challenge to the identification of accused-appellant as one of the perpetrators must likewise fail. Accused-appellant Buena admitted having had sexual intercourse with Veneelyn, but with her consent and only upon her invitation. In the absence of any cause to disregard the trial court's finding that such defense is unbelievable, this Court sees no reason to rule otherwise for we have to acknowledge that the trial court was in a better position to assess the truth or falsity, the probability or preposterousness of what accused-appellant Buena said on the witness stand (*People vs. Villanueva, et. al.*, G.R. No. 114266, December 4, 1996).

True, there was no test conducted to determine the presence of any sedative or drug in the drinks given to the victims which caused them to lose momentary control of their faculties. But this is of little consequence as the same is not an indispensable element in a prosecution for rape. Under the circumstances, it suffices that the victim was found to have been unconscious at the time the offender had carnal knowledge of her.

And if Maria Virginia lied at first to her mother regarding the incident, she cannot be faulted, for that is but natural since it is recognized by jurisprudence that different people react differently to a given situation (*People vs. Malunes*, 247 SCRA 317), not to speak of the natural reluctance of a young girl to admit having been ravished.

Further, the finding of conspiracy made by the trial court is correct, established as it was by the conduct of accused-appellant and del Rosario before, during, and after the incident which reasonably showed their community of criminal purpose: accused-appellant Buena and del Rosario were with Ronnel when the latter ordered Blessilda to get softdrinks for Veneelyn and Maria Virginia; after consuming the softdrinks given by Blessilda, Veneelyn and Maria Virginia felt dizzy and later lost consciousness; when they woke up, both del Rosario and accused-appellant Buena were lying on the same bed they were in; Veneelyn was completely naked while Maria Virginia only had her skirt on; and both girls felt pain in their sexual organs. The trial court also found, and this is undisputed by accused-appellant, that del Rosario raped Veneelyn when she was left alone after Maria Virginia was able to escape. The inference that Veneelyn and Maria Virginia have been ravished by del Rosario and accused-appellant Buena seems more than reasonable.

Oddly enough, accused-appellant's contention that the trial court erred in ruling that flight indicates guilt results from miscomprehension. It should be clear from the decision that the trial court was referring to del Rosario and not to accused-appellant Buena who, as far as the record shows, never fled.

The Court, therefore, affirms the judgment of conviction rendered by the trial court, although with modifications to correct certain errors.

It is uncontroverted that accused-appellant Buena was only 15 years old at the time of the commission of the offense and was still a minor at the time the trial court's decision was handed down. He is, therefore, entitled to

the privileged mitigating circumstance of minority, necessitating reduction of the imposable penalty, under the factual environment, by two degrees. The penalty for rape being reclusion perpetua, he should be sentenced only to suffer the penalty of prision mayor in its medium period in the absence of any mitigating or aggravating circumstance (Articles 13(2), 64(1) and 68(1), Revised Penal Code).

Also, the trial court, taking into account accused-appellant Buena's minority chose to apply the provisions of Article 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended, which states:

ART. 192. Suspension of Sentence and Commitment of Youthful Offender. – If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts as charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court upon application of the youthful offender and if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and Development and/or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible person under whose care he has been committed.

(underscoring supplied)

The record, unfortunately for accused-appellant Buena, does not show that he filed with the trial court an application for suspension of sentence so as to put into operation the benevolent provisions of Presidential Decree No. 603. The Court, therefore, has no other choice but to deny him this privilege.

Finally, the Court deems it necessary to increase the amount of civil indemnity granted to the victims from P30,000.00 to the current level dictated by jurisprudence, which at present stands at P50,000.00.

WHEREFORE, the appealed judgment of conviction is hereby AFFIRMED, but MODIFIED as follows: (a) accused-appellant Buena is sentenced to suffer an indeterminate penalty ranging from two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum; (b) the portion extending the benefits of a suspended sentence under Presidential Decree No. 603 to accused-appellant Buena is deleted; and (c) the civil indemnity for which accused-appellant Buena is held liable for, respectively, in Criminal Cases Nos. 209-92 and 210-92 is increased to P50,000.00. No special pronouncement is made as to costs.

SO ORDERED.

Romero, Francisco, and Panganiban, JJ., concur
Navasa, C.J., (Chairman), on leave.

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